IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8843 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMADBIN @ DHEDHO MOHAMMEDBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR UR BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. The petitioner herein has filed this petition under Article 226 of the Constitution challenging his detention order passed by the District Magistrate, Bhavnagar, on 05th of April, 2000 in exercise of powers

vested in him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short).

2. Detaining Authority has placed reliance on five offences registered against the petitioner before `C' Division Bhavnagar Police Station under Section 379 of the Indian Penal Code whereby it was alleged that the petitioner was involved in theft of cash and cycles. The detaining authority has also placed reliance on the statements of 4 witnesses who on assurance of anonymity offered statements against the petitioner that the petitioner was a headstrong person and hardened criminal and was obstruction to public order and public peace. The petitioner therefore was declared as a "dangerous person" within the meaning of Section 2(c) of the PASA Act. Therefore, the impugned order was passed against the petitioner by the detaining authority.

3. Learned Advocate Mr. M.M. Tirmizi for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. Amongst various grounds urged to challenge the detention order, it was vehemently urged that the claim of privilege under Section 9(2) of the PASA Act as claimed by the detaining authority was wrongly claimed and, therefore, the order of detention is vitiated. It was urged that the detaining authority has not reached properly to the subjective satisfaction to claim privilege under Section 9(2) of the PASA Act so as to keep secret the identity of the witnesses who offered statements against the petitioner, which in turn prejudiced the right of the petitioner to make effective representation.

5. When the contentions were examined with the factual aspect of the case, it is revealed that the statements of the witnesses are recorded by the Police Inspector, LCB, Bhavnagar. Those statements are further verified by Spl. Divisional Police Officer, Bhavnagar and below the statement, an endorsement has been placed by the detaining authority "verified the contents" and the same has been signed by the detaining authority. The facts of the present case therefore is covered by a decision of this Court in the matter of JAKIRBHAI RAHIMBHAI NAGORI vs. DISTRICT MAGISTRATE, MEHSANA, reported in 1996(1) GLH 300. After placing reliance on a Bench decision of this Court, in the case of KOLI ASHWIN

vs. STATE OF GUJARAT in Spl. Criminal Application No.1812 of 1993, this Court observed that the claim of privilege by the detaining authority under Sec. 9(2) of the Act was not genuine. The Court further placed reliance on the following observations from the case of Koli Ashwin (supra):

> "However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy.S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

6. From the above, it is clear that before claiming privilege under Sec. 9(2) of the PASA Act, detaining Authority is required to reach a subjective satisfaction that the contents of the statements were true as per the belief of the detaining authority. There must be something on record, which might have led the detaining authority to believe that the apprehension of the witnesses or the fear expressed was genuine one. This is not enough to claim privilege u/s 9(2) of the PASA Act by the detaining authority to simply put an endorsement to the extent only "verified the contents", subjective satisfaction in this respect must be reflected on the record on contemporaneous material. When we go through the order of detention, the detaining authority has claimed that he himself has carefully verified the statements of the witnesses and thereafter the privilege has been claimed. In the present case, there is no material that the detaining authority satisfied himself that the fear expressed by the witnesses or apprehension was considered to be true and genuine by the detaining authority. Therefore, in absence of such exercise, the claim of privilege made by the detaining authority in this case under Section 9(2) of the PASA Act was not genuine and to the aforesaid extent the detenu was denied an opportunity of making effective representation by making and supplying to him the other details of the

statements of the witnesses. In the result, the continued detention of the petitioner is vitiated and the order of detention therefore is required to be set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the District Magistrate, Bhavnagar on 5th of April, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Samadbin @ Dhedho Mohammedbhai is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair